



September 22, 1981

Mr. Samuel Duca, M.A.I.
Assessor
City/County of San Francisco
City Hall, Room 101
San Francisco, CA 94102

Re: Chapter 38 – Transit Impact Development
Fee Ordinance No. 225-81

Dear Mr. Buca:

Your letter of September 21, 1981 and attachments thereto indicate that you have been requested to provide information concerning the size (square footage) of certain buildings on the assessment role to the San Francisco Public Utilities Commission. The forwarded material also indicates that you have refused to provide the requested data on the basis that it is not open to public inspection under Revenue and Taxation Code Section 409 and because of the data you do have would not comply with the specifications of the ordinance which the data would be used to implement.

I, of course, have no information as to the specifications of the ordinance nor any means of knowing whether or not your data might be useable by the Commission. I limit my response to the question of whether or not data of the type mentioned is open to public inspection under Section 408. In view of the holding of Statewide Homeowners Inc. v. E. C. Williams, 30 Cal.App.3d 567, I am of the opinion the data is not open to the public including the Commission.

As you are aware the Statewide Homeowners decision was to the effect that there are statutory exceptions to the Public Record Act, which make certain information confidential. It was pointed out, however, that Section 408 goes beyond the confidential or non-confidential nature of any particular information and is instead based on whether or not the information is or is "... not required by law to be kept or prepared by the assessor..." When the information is not required to be kept or prepared by the assessor, as appears to be the case in this instance, such information is not public.

A question could arise as to whether the Commission (a governmental agency) is covered by the Statewide Homeowners decision is that the party seeking information in that case was a private corporation. In my opinion the distinction is not meaningful. Section 408 (a) prohibits making certain information public except as provided in paragraphs (b) and (c) thereof. Paragraph (c) requires disclosure of information to certain governmental agencies and legislative bodies, however, local public utility commissions are neither specifically mentioned nor could they be included by implication among those agencies or bodies to which information is to be given.



(916) 445-4380

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To reiterate, it is my opinion that the data in question is not required by law to be prepared or kept by the assessor and is therefore not open to public inspection pursuant to the restrictions of Section 408 of the Revenue and Taxation Code.

Sincerely,

J. J. Delaney
Chief Counsel

JJD:po

cc: Honorable Dianne Feinstein
Honorable George Agnost
Mr. Richard Skier, General Manager
Of Public Utilities

bcc: D. D. Bell
G. L. Rigby